IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 9613 of 2007(T)

PETITIONER:

M/S.BHIMA JEWELS, M.G.ROAD,
ERNAKULAM, REPRESENTED BY ITS MANAGING PARTNER,
B.BINDUMADHAV.

BY ADV. SRI.K.M.FIROZ

RESPONDENT:

THE ASSISTANT COMMISSIONER (ASSESSMENT)-
I, SPECIAL CIRCLE-II, COMMERCIAL TAXES OFFICE,
ERNAKULAM.

BY SR.GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

WP(C)NO.9613 OF 2007-T

Judgment

The petitioner challenges Ext.P1 revised assessment order issued by the respondent. Against the said order, it has got a right of appeal under the provisions of the KGST Act. But, it has ventured to make a frog leap to this Court, challenging the said order directly. The grounds urged in support of the said motion is that the respondent, while passing the order Ext.P1, has ignored certain directions issued by this Court in Ext.P2 Judgment. According to the petitioner, some of the directions issued by this Court in the said Judgment have been ignored and a contrary view has been taken while passing the revised assessment order. Therefore, this Court should entertain this Writ Petition and pass appropriate orders, redressing the grievance of the petitioner, it is submitted.

2. The learned Senior counsel for the petitioner Dr.K.B.Mohammedkutty submitted that the earlier order of the assessing authority, Ext.P3 has merged with Ext.P2 Judgment and therefore, the assessing authority is not competent to modify Ext.P3, while passing Ext.P1. In support of that submission, the learned Senior Counsel relied on the Division Bench decision of this Court in ***Manakad Service Co-operative Society Ltd. v. Manikantan Nair*** (1986(1) KLT 195). He also relied on the decision of the Apex Court in ***Bhopal Sugar***

Industries v. Income Tax Officer (AIR 1961 SC 182). It is a Constitution Bench decision of the Apex Court, wherein it was held that the Income Tax Officer is bound to follow the directions issued by the Income Tax Appellate Tribunal and the High Court should have issued a writ of mandamus, as of right, to compel the Officer to do that. The learned Senior Counsel further relied on the decision of this Court in ***V.S.Narayanan Nair v. Sales Tax Officer*** (1971 KLT 256), wherein it was held that an inferior tribunal is always bound by the directions issued by the superior tribunal.

2. I heard the learned Government Pleader appearing for the respondents also. I feel that since the petitioner has got an efficacious remedy of filing an appeal before the First Appellate Authority and thereafter, a second appeal to a Judicial Tribunal, headed by a District Judge and later, a further revision to the Division Bench of this Court, it is unnecessary for this Court to interfere with Ext.P1 assessment order. Even assuming, all the contentions of the petitioner are correct and the decision is rendered, ignoring Ext.P2 judgment, I feel that the said illegality can be corrected by the appellate authority. The appellate authority can go through the Judgment and find out whether Ext.P1 is rendered, ignoring or contrary to the directions in Ext.P2 Judgment and the appellate authority is empowered or rather duty bound to correct the original assessment to make it in tune with Ext.P2 Judgment. Therefore, it is unnecessary for this Court to entertain this Writ Petition. The decision of the Division Bench of this Court

relied on by the learned Senior Counsel for the petitioner in ***Manakad Service Co-operative Society***'s case has no application to the facts of this case. It was a case, where the decision of the Co-operative Tribunal was challenged before this Court and it was affirmed by this Court by dismissing the Writ Petition. Later, a petition for review was filed before the tribunal. The tribunal declined to exercise the power of review on the ground that its judgment has already merged with the judgment of the High Court. But, a learned single Judge of this Court interfered and ordered the tribunal to entertain the review. The Division Bench of this Court, in appeal, set aside the Judgment and held that since the order of the tribunal merged with the decision of this Court, the tribunal is not competent to review its judgment. The said decision has no application to the facts of this case. It is no doubt true that the assessing authority cannot modify the judgment of this Court. He is absolutely bound by it. The other decisions relied on by the learned Senior Counsel also lay down the salutary principle that a lower authority should follow the decisions rendered by the higher tribunals or courts. While the appellate authority hears the appeal against Ext.P1, the above principles laid down by the decision of the Apex Court and also this Court have to be borne in mind. The respondent's order, to the extent it is against Ext.P2, is liable to be set aside by the appellate authority. This Court's time and resources should be preserved for matters which, this Court alone can handle. When the petitioner can get relief from the statutory forums provided under the Act, it is

unnecessary for this Court to waste its time and resources to entertain this Writ Petition and hear it on merits. For all the above reasons, the Writ Petition fails and it is dismissed without prejudice to the contentions of the petitioner and its right to invoke the appellate remedy available to it under the statute.

22.03.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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